UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

June 9, 2011

Re: Tenet Healthcare Corporation and Park Plaza Medical Center
Case No. 16-CA-26363

California Nurses Association/National Nurses Organizing Committee
(Tenet Healthcare Corporation and Park Plaza Medical Center)
Case No. 16-CB-7753

[redacted]
National Right to Work Legal Defense Foundation
8001 Braddock Road, Suite 600
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Dear [redacted]

Your appeal from the Regional Director's dismissal of the above-captioned charges has been considered. The appeal is denied substantially for the reasons set forth in the Regional Director's letters of April 19, 2011.

Subsequent to the authorization of complaint on February 16, 2010, the Board on December 6, 2010, issued its decision in *Dana Corp*., 356 NLRB No. 49 (2010). The central theory supporting issuance of complaint was that bargaining with an entity that is not a statutory bargaining representative over an election procedures agreement providing for binding interest arbitration as a means of resolving issues in a first contract constituted unlawful prerecognition bargaining. Among, however, the provisions in the agreement between employer and union in the *Dana* case, was a similar interest arbitration provision. Notwithstanding the existence of this provision as well as certain other provisions addressing, in general language, various terms and conditions of employment, the Board majority found no violation of the Act. In view of this Board decision, the evidence in the cases on appeal does not establish conduct violative of the Act.

With regard to the appeal's request that the case be held in abeyance pending a Court of Appeals review of the Board's decision in *Dana*, the NLRA is a federal statute and Board authority that

has not been reversed by the Supreme Court is controlling authority with respect to decisions made by the General Counsel of the NLRB. Accordingly, it would be inappropriate to further delay a decision in the cases on appeal.

Sincerely,

Lafe E. Solomon
Acting General Counsel

By_____
Deborah M.P. Yaffe, Acting Director
Office of Appeals

cc: Martha Kinard, Regional Director
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